



# House of Representatives

General Assembly

**File No. 536**

*January Session, 2005*

Substitute House Bill No. 6965

*House of Representatives, April 26, 2005*

The Committee on Finance, Revenue and Bonding reported through REP. STAPLES of the 96th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

## **AN ACT CONCERNING NEXUS FOR THE PURPOSES OF THE SALES TAX.**

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1      Section 1. (*Effective from passage*) (a) An out-of-state vendor has  
2      substantial nexus with this state and is required to collect taxes  
3      pursuant to chapter 219 of the general statutes if: (1) The out-of-state  
4      vendor and an in-state business maintaining one or more locations  
5      within this state are related parties, as provided in subsection (b) of  
6      this section; and (2) the out-of-state vendor and the in-state business  
7      use an identical or substantially similar name, tradename, trademark  
8      or good will to develop, promote or maintain sales, or the in-state  
9      business provides services to, or that inure to the benefit of, the out-of-  
10     state business related to developing, promoting or maintaining the in-  
11     state market.

12     (b) Two entities are related parties under this section if they meet

13 any one of the following tests:

14 (1) Both entities are component members of the same controlled  
15 group of corporations under Section 1563 of the Internal Revenue  
16 Code;

17 (2) One entity is a related taxpayer to the other entity under the  
18 provisions of Section 267 of the Internal Revenue Code;

19 (3) One entity is a corporation and the other entity and any party,  
20 for which Section 318 of the Internal Revenue Code requires an  
21 attribution of ownership of stock from that party to the entity, own  
22 directly, indirectly, beneficially or constructively at least fifty per cent  
23 of the value of the outstanding stock of the corporation; or

24 (4) One or both entities is a limited liability company, partnership,  
25 estate or trust, none of which is treated as a corporation for federal  
26 income tax purposes, and such limited liability company, partnership,  
27 estate or trust and its members, partners or beneficiaries own in the  
28 aggregate directly, indirectly, beneficially or constructively at least fifty  
29 per cent of the profits, capital, stock or value of the other entity or both  
30 entities.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>from passage</i>	New section

**FIN**

*Joint Favorable Subst.*

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

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**OFA Fiscal Note****State Impact:**

Agency Affected	Fund-Effect	FY 06 \$	FY 07 \$
Department of Revenue Services	GF - Revenue Gain	\$1,000,000 to \$2,000,000	\$1,000,000 to \$2,000,000

Note: GF=General Fund

**Municipal Impact:** None**Explanation**

The bill is estimated to result in a revenue gain to the sales tax of approximately \$1 to \$2 million per year.

The estimate was formulated based on information published in a report prepared for the National Governor's Association and the National Conference of State Legislatures by Forrester Research, Inc. on the growth of ecommerce. The report included a listing of largest retailers that sell offline (through retail stores) and online through the Internet. This information was used to develop an estimate of the revenue that may be collected by DRS using the enforcement mechanisms contained in the bill.

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**OLR Bill Analysis**

sHB 6965

**AN ACT CONCERNING NEXUS FOR THE PURPOSES OF THE SALES TAX****SUMMARY:**

This bill amplifies and makes more explicit conditions under which an out-of-state seller with no Connecticut location (nexus), but which has a relationship to a Connecticut-located company, must collect and remit the Connecticut sales tax on items or services it sells to Connecticut destinations.

Current law extends Connecticut sales tax nexus to an out-of-state company through a Connecticut-located retailer when:

1. the out-of-state company is controlled by the Connecticut retailer or is under common control with it and
2. the out-of-state company is in the same or a similar line of business as the Connecticut-located retailer (CGS §12-407(15)(A)(vi),(vii)).

The bill extends sales tax nexus to an out-of-state company when:

1. the out-of-state and Connecticut-located companies are “related parties” and
2. the two either (a) use identical or substantially similar names, trade names, trademarks, or goodwill to develop, promote, or maintain sales or (b) the Connecticut-located company provides services to, or for the benefit of, the other, and the services relate to developing, promoting, or maintaining the Connecticut market.

Although the bill appears to have general application, it is drafted as a special act.

EFFECTIVE DATE: Upon passage

**RELATED PARTIES**

Under the bill, an out-of-state seller and a Connecticut-located company are considered related parties if:

1. under federal tax law they are so closely connected through stock ownership that they are considered (a) members of the same controlled group of corporations (26 USCA § 1563) or (b) related taxpayers (26 USCA § 267);
2. one is a corporation and the other effectively owns at least 50% of its outstanding stock, according to federal tax law (26 USCA § 318); or
3. one or both are limited liability companies, partnerships, estates, or trusts, and one effectively owns at least 50% of the other.

**FEDERAL TAX LAW DEFINITIONS INCORPORATED INTO THE BILL*****Controlled Group of Corporations (26 USCA § 1563(a))***

A “controlled group of corporations” is any of the following combinations of companies:

1. a parent-subsidary controlled group, in which one or more companies are connected through corporate chains to a common parent;
2. a brother-sister controlled group, which unites two or more otherwise unrelated corporations that share a level of common ownership by five or fewer individuals, estates, or trusts; or
3. a combined group, in which three or more companies are each members of either a parent-subsidary or brother-sister group and the parent of the parent-subsidary group is also a member of the brother-sister group.

In general, controlled groups require an ownership of 80% of a corporation’s outstanding stock voting power or value. A brother-sister controlled group in addition requires ownership of more than

50% of the voting power or value of each corporation in the group.

***Related Taxpayer (26 USCA §267(b))***

The federal law covers the following relationships:

1. family members (i.e., full and half brothers and sisters, spouse, ancestors, and lineal descendants);
2. a person and a corporation, if the person directly or indirectly owns more than 50% of the corporation's stock;
3. two corporations that are members of the same controlled group (see above, except the stock ownership threshold in this instance is more than 50% instead of 80%);
4. a grantor and fiduciary of any trust;
5. the fiduciaries of two trusts, if the trusts have the same grantor;
6. a fiduciary and beneficiary of the same trust;
7. a fiduciary of one trust and a beneficiary of another, if the trusts have the same grantor;
8. a fiduciary of a trust and a corporation in which more than 50% of the outstanding stock value is owned by the trust or by or for its grantor;
9. a person and a nonprofit tax-exempt charitable or educational organization that he or, if he is an person, that members of his family, directly or indirectly controls;
10. a corporation and a partnership if the same people own more than 50% of each;
11. two S corporations, if the same people own more than 50% of the outstanding stock of each;
12. an S corporation and a C corporation if the same people own more than 50% of the outstanding stock of each; and

13. in most cases, an executor and beneficiary of the same estate.

***Attribution of Stock Ownership (26 USCA §318)***

Federal law generally requires stock ownership to be attributed to a person if it is owned by his spouse (unless legally separated), children (including adopted children), grandparents, or parents.

Stock owned by partnerships (including S corporations) or estates is considered proportionately owned by the partners or beneficiaries and vice versa. Stock owned by trusts is considered owned by the trust's grantor or owner or proportionately by its beneficiaries and vice versa.

Stock owned by any corporation is considered owned by anyone who owns more than 50% of the value corporation's stock, in proportion to the value of the person's stock to the corporation's total outstanding shares, and vice versa.

Ownership of options to acquire stock is counted as ownership of the stock.

**COMMITTEE ACTION**

Finance, Revenue and Bonding Committee

Joint Favorable Substitute

Yea 33      Nay 15